

GARY M. RESTAINO
United States Attorney
District of Arizona

KEVIN M. RAPP
Arizona Bar No. 014249
Kevin.Rapp@usdoj.gov
COLEEN P. SCHOCH
Georgia State Bar No. 366545
Coleen.Schoch@usdoj.gov
Assistant U.S. Attorneys
Two Renaissance Square
40 N. Central Ave., Suite 1200
Phoenix, Arizona 85004
Telephone: 602-514-7500
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,
vs.

David Allen Harbour,
Defendant.

No. CR-19-00898-PHX-DLR

**SUPPLEMENTAL PROPOSED
MODIFIED JURY INSTRUCTION
1.2**

Pursuant to the Court's Order the United States is submitting modified Jury Instruction 1.2.

1.2 The Charge—Presumption of Innocence

This is a criminal case brought by the United States government. The government charges the defendant with Counts 1-10, Wire Fraud; Counts 11-12, Mail Fraud; and Counts 13-23, Transactional Money Laundering;. The second superseding indictment simply describes the charges the government brings against the defendant. The second superseding indictment is not evidence and does not prove anything.

The defendant has pleaded not guilty to the charges and is presumed innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In

1 addition, the defendant has the right to remain silent and never has to prove innocence or
2 present any evidence.

3 To help you follow the evidence, I will now give you a brief summary of the
4 elements of the crimes that the government must prove to make its case:

5
6 **I. Wire Fraud**

7 First, the defendant, David Allen Harbour knowingly devised or intended to devise
8 a scheme or plan to defraud investors, or a scheme or plan for obtaining money or property
9 from investors by means of false or fraudulent pretenses, representations, or promises to
10 investors, or omitted facts. Deceitful statements of half-truths may constitute false or
11 fraudulent representations;

12 Second, the defendant acted with the intent to defraud, that is, the intent to deceive
13 and cheat;

14 Third, the statements made or facts omitted as part of the scheme were material; that
15 is, they had a natural tendency to influence, or were capable of influencing, a person to part
16 with money or property; and

17 Fourth, the defendant used, or caused to be used, an interstate or foreign wire
18 communication to carry out or attempt to carry out an essential part of the scheme.

19
20 **II. Mail Fraud**

21 First, the defendant, David Allen Harbour knowingly participated in a scheme or
22 plan to defraud, or a scheme or plan for obtaining money or property by means of false or
23 fraudulent pretenses, representations, or promises;

24 Second, the statements made or facts omitted as part of the scheme were material;
25 that is, they had a natural tendency to influence, or were capable of influencing, a person
26 to part with money or property;

27 Third, the defendant acted with the intent to defraud; that is, the intent to deceive or
28 cheat; and

1 Fourth, the defendant used, or caused to be used, the mail to carry out or attempt to
2 carry out an]essential part of the scheme.

3
4 **III. Transactional Money Laundering**

5 First, the defendant, David Allen Harbour knowingly engaged or attempted to
6 engage in a monetary transaction;

7 Second, the defendant knew the transaction involved criminally derived property;

8 Third, the property had a value greater than \$10,000;

9 Fourth, the property was, in fact, derived from Wire or Mail Fraud; and

10 Fifth, the transaction occurred in the United States.

11 The term “monetary transaction” means the deposit, withdrawal, transfer exchange,
12 in or affecting interstate commerce, of funds or a monetary instrument by, through, or to a
13 financial institution.

14
15 Respectfully submitted this 9th day of January, 2023.

16 GARY M. RESTAINO
17 United States Attorney
District of Arizona

18 s/ Coleen P. Schoch

19 S/ Kevin M. Rapp

20 KEVIN M. RAPP
21 COLEEN P. SCHOCH
22 Assistant U.S. Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants

s/Daniel Parke
U.S. Attorney's Office